

Message Text

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ORIGIN L-03

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DRAFTED BY L/ARA:DAGANTZ

APPROVED BY ARA:HSHLAUDEMAN

L:MBFELDMAN (DRAFT)

ARA/CCA:HVSIMON (SUB)

ARA/BC:JKARKASHIAN (SUB)

ARA/PAN:RHOWARD (SUB)

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FM SECSTATE WASHDC

TO AMEMBASSY PANAMA IMMEDIATE

AMEMBASSY SANTIAGO IMMEDIATE

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E.O. 11652: N/A

TAGS: PN, CI, PFOR

SUBJECT: ATTACHMENT OF CUBAN SHIP IMIAS

REF: PANAMA 5358

1. ALMOST SIMULTANEOUSLY WITH RECEIPT OF REFTTEL, DEPT RECEIVED NOTE FROM CUBAN GOVERNMENT OBJECTING TO ATTACHMENT OF IMIAS AND SEEKING SOVEREIGN IMMUNITY. NOTE WAS BRIEF, RESTRAINED IN TONE, DEALT ONLY WITH SPECIFIC FACTS AND REQUEST FOR IMMUNITY. DEPARTMENT PLANS TO REPLY TOMORROW (OCTOBER 5) WITH STANDARD RESPONSE TO SUCH REQUESTS DESCRIBING "RESTRICTIVE" THEORY OF SOVEREIGN IMMUNITY AND LEGAL PROCEDURES TO BE FOLLOWED IN PRESENTING REQUEST TO STATE DEPARTMENT. (PRACTICE USUALLY INVOLVES PRESENTATION OF LEGAL MEMORANDA AND HEARING BEFORE DEPARTMENT; DEPARTMENT THEN DECIDES WHETHER IT SHOULD MAKE A SUGGESTION TO THE COURT THAT THE DOCTRINE OF SOVEREIGN IMMUNITY BE APPLIED TO BAR SUIT.)

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2. LEGAL OFFICER BONEFOY OF CHILEAN EMBASSY ALSO CONTACTED DEPARTMENT, SEEKING ANY INFORMATION AVAILABLE ON REPORTED ATTACHMENT OF IMIAS IN CANAL ZONE. BONEFOY INDICATED LITTLE KNOWLEDGE OF FACTS; HE ASSUMED CARGO WAS SUGAR AND EXPRESSED HIS HOPE THAT MEANS WOULD BE FOUND TO PERMIT

CHILE TO RECOVER SUGAR ITSELF, RATHER THAN JUST THE PROCEEDS.

3. FOR PANAMA: DEPARTMENT UNDERSTANDS PER KOZAK/MCKABNEY TELECON THAT VESSEL IS CARRYING GENERAL CARGO AND PROBABLY IS NOT CARRYING SUGAR. REQUEST CONFIRMATION THAT NO SUGAR ABOARD. (CZ CUSTOMS HAS CARGO MANIFEST.) SUBSEQUENT TO TELECON, DEPT RECEIVED INFO THAT CUBAN GOVERNMENT'S NEW YORK ATTORNEYS HAVE RETAINED LOCAL COUNSEL. WOULD APPRECIATE NAME OF FIRM IF AVAILABLE. ALSO UNDERSTAND THAT CAPTAIN OF MARBLE ISLAND (CUBAN SHIP ATTACHED OCTOBER 2 WHICH DEPARTED ZONE WATERS WITHOUT AUTHORIZATION) AND/OR MANBESA LINE MAY BE SUBJECT TO CIVIL OR CRIMINAL PROCEEDINGS AS A RESULT OF SUCH DEPARTURE. PLEASE ADVISE AS TO PRECISE NATURE OF SUCH POSSIBLE ACTIONS.

4. FOR SANTIAGO: YOU SHOULD ADVISE APPROPRIATE GOC OFFICIALS THAT THE CUBAN GOVERNMENT HAS PRESENTED A REQUEST FOR SOVEREIGN IMMUNITY WHICH USG EXPECTS TO TREAT IN ACCORDANCE WITH NORMAL PROCEDURES (SEE PARA 1 ABOVE). LEGAL OFFICER BONEFOY, WHO HAS ALREADY BEEN IN TOUCH WITH US, WILL BE APPRISED OF PROCEDURES.

5. FYI: ALTHOUGH REQUESTS FOR SUGGESTIONS OF SOVEREIGN IMMUNITY ARE DECIDED ON A CASE-BY-CASE BASIS, THERE ARE MANY PRECEDENTS FOR DENYING SOVEREIGN IMMUNITY IN CASES INVOLVING MERCHANT SHIPS. DEPARTMENT WISHES TO AVOID ANY ACTIONS WHICH WOULD INDICATE USG INVOLVEMENT IN MATTER BEYOND THAT NORMALLY REQUIRED IN SOVEREIGN IMMUNITY CASES. END FYI. RUSH

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